IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5079 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYAMBE PETROLEUM SERVICE

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 5079 of 1998

MR HR PRAJAPATI for Petitioner No. 1

MR ARUN D OZA, GOVERNMENT PLEADER for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner is having a petrol pump on the National Highway (Kalol - Mehsana) at Tal. Kalol, Dist.

Mehsana. The person incharge, namely, Pratapbhai Muljibhai was present at the time of inspection on 11th/12th January 1996. A show cause notice was issued by the District Collector on 13-5-1996 at Annexure.B to the petition wherein three irregularities were referred to. The first irregularity was that the petitioner has not renewed the licence which expired on 31st December 1995 and the density of the petrol and diesel was not as per the prescribed norms under the provisions of the Essential Commodities Order, 1955 and the consumers were given less quantity as referred to in the notice.

2. The petitioner filed reply on 21st May 1996 and explained the position, namely, that the licence was applied for on 13th January 1996 and as per the inspection carried out by the competent authority, the meter was in accordance with the prescribed norms and the difference in density was because of certain reasons which were beyond the control of the petitioner.

3. The Collector, accepting the explanation of the petitioner, has imposed penalty of seizure of complete stock amounting to Rs.1,73,772.72 ps.

4. Against the said order of the Collector, the petitioner approached the State Government by way of appeal. The said appeal came to be disposed of by order dated 30th April 1996 and the penalty of 100% seizure was reduced to 50%.

5. Learned Advocate Mr.Prajapati for the petitioner has relied upon the judgment in the case of Patel Ambaram Kuberbhai v. State of Gujarat, reported in 1998 (2) GLH 533 wherein the Division Bench of this Court has observed in paras 10 and 11 as under:

> "10. So far as merits are concerned, prima facie, the learned Counsel for the appellant is right that no finding regarding black-marketing or hoarding has been recorded nor such allegation was made. As observed by a learned Single Judge in M/s.Govind Karsan & Co. v. State (1983) 24 (I) GLR 145, if there is no intention of black-marketing or hoarding on the part of the person committing breach of the provisions of the Order, the Court may exercise discretion by reducing the penalty.
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> 11. In the facts and circumstances of the case, therefore, in our opinion, ends of justice would be met if instead of 50% confiscation ordered by

the State Government, 25% of the goods are ordered to be confiscated."

6. Learned Advocate Mr.Prajapati for the petitioner has fairly conceded that the petitioner may be given the benefit of the said judgment in view of the fact that there is no allegation in the notice regarding black-marketing or hoarding on the part of the person committing breach of the provisions. The allegation made in the notice is of technical nature and therefore, I am of the view that the view taken by the Division Bench in the aforesaid case is applicable in the present case and hence, the order of the State Government is required to be modified and the ends of justice would be met if instead of 50% of the order of confiscation is reduced to 25%.

7. In the result, the petition is partly allowed. The order of confiscation is modified to the extent that instead of 50% of confiscation, it is ordered to be reduced to 25%. Rule is made absolute to the aforesaid extent, with no order as to costs.

(K.S. Jhaveri, J.)
Sreeram.